

MAGISTRATE JUDGE *John*

FILED  
Clerk's Office  
USDC, Mass.

APR 09 2005 *fm*

Deputy Clerk

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

U.S. DISTRICT  
COURT

**05 10714 PBS**  
TRUSTEES OF THE PLUMBERS & PIPEFITTERS'  
NATIONAL PENSION FUND; TRUSTEES OF THE  
PLUMBERS & PIPEFITTERS' INTERNATIONAL  
TRAINING FUND; TRUSTEES OF THE PLUMBERS AND  
PIPEFITTERS' LOCAL UNION NO. 4 HEALTH  
& WELFARE FUND; PENSION FUND; ANNUITY FUND;  
JOINT APPRENTICE TRAINING FUND; INDUSTRY  
FUND; BUILDING & RELIEF FUND and PLUMBERS AND  
PIPEFITTERS UNION LOCAL NO. 4

*Plaintiffs*

VS.

**STERLING PLUMBING & HEATING CO., INC. and  
MANUEL A. PACHECO**

*Defendants*

Civil Action No.

RECEIPT # *63401*

AMOUNT \$ *250*

SUMMONS ISSUED *yes*

LOCAL RULE 4.1 *yes*

WAIVER FORM *yes*

MCF ISSUED *yes*

BY DPTY. CLERK *fm*

DATE *4-11-05*

April 6, 2005

**ERISA COLLECTION COMPLAINT**

1. This is an action under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 USC §1001, et seq., as amended by the Multi-Employer Pension Plan Amendments Act, 29 U.S.C. §1381 et seq., and the Labor Management Relations Act of 1947, 29 U.S.C. § 185, brought on behalf of the Trustees of the Plumbers & Pipefitters' National Pension Fund; Trustees of the Plumbers & Pipefitters' International Training Fund; Trustees of the Plumbers and Pipefitters' Local Union No. 4 Health & Welfare Fund; Pension Fund; Annuity Fund; Joint Apprentice Training Fund; Industry

Fund; Building & Relief Fund and Plumbers and Pipefitters Union Local No. 4 (the "Plaintiffs") for damages arising from unpaid Funds contributions.

2. This Court has jurisdiction, and venue lies in this district pursuant to ERISA § 502 (e)(1) and (2); 29 U.S.C. § 1132(e)(1) and (2), § 515; 29 U.S.C. § 1145 and the LMRA § 301 (a); 29 U.S.C. § 185(a), and 28 U.S.C. § 1331.

3. Defendant Sterling Plumbing & Heating Co., Inc. (hereinafter "Sterling Plumbing") is an "employer" within the meaning of 29 U.S.C. §1002(5) with a principal place of business located at 4 Campground Road, Sterling, Massachusetts 01564, and is an employer in an industry affecting commerce within the meaning of 29 U.S.C. § 142(1) and § 152 (2), (6) and (7).

4. Defendant Sterling Plumbing is a party to and bound by a Collective Bargaining Agreement (hereinafter "CBA").

5. The Defendant, Manuel A. Pacheco, is the President of Sterling Plumbing & Heating Co., Inc.

6. Plaintiffs Trustees of the Plumbers & Pipefitters' National Pension Fund; Trustees of the Plumbers & Pipefitters' International Training Fund; Trustees of the Plumbers and Pipefitters' Local Union No. 4 Health & Welfare Fund; Pension Fund; Annuity Fund; Joint Apprentice Training Fund; Industry Fund; and Building & Relief Fund (the "Funds") are third-party beneficiaries of the CBA between the Association and the Union.

7. Plaintiffs are "fiduciaries" within the meaning of Section 502(a)(3) of ERISA, 29 U.S.C. §1002(37)(A) and each is an "employee benefit plan" or "plan" within the meaning of Section 3(3) of ERISA, 29 U.S.C., §1002(3). The Funds have their principal office at and are administered from 29 Endicott Street, Worcester, Massachusetts 01610 and 103 Oronoco Street, Alexandria, VA 22314.

**COUNT I: ERISA – Claim for Delinquent Funds Contributions**

8. At all material times, Defendant was obligated by the terms of the CBA between Defendant and the Union and by the terms of the Funds' Agreement and Declaration of Trust ("Trust Agreement") to which Defendant is bound to make contributions to the Plaintiff Funds for each hour worked by its plumbing employees who labor under the terms of the CBA.

9. Consistent with the CBA and the Trust Agreement's collection policy, Funds contributions are due on the thirtieth (30<sup>th</sup>) day of the month following the month in which the contributions accrued.

10. Defendant's last payment to the Funds was for contributions owed for the month of July 2004. Since that time, Defendant has failed to make required contributions to the Plaintiff Funds in violation of Section 515 of ERISA, 29 U.S.C. § 1145. Defendant is presently delinquent in contributions owed to the Funds for the months of August 2004 through February 2005.

11. Monthly reports submitted to the Funds by the Defendant, as required by the Agreement's collection policy and the CBA, demonstrate that Defendant owes

contributions to the Funds for work performed by its employees and Union members for the months of August 2004 through February 2005 in the amount of **\$263,893.73**.

Accordingly, for the period of August 2004 through February 2005, the Defendant owes delinquent contributions to the Funds in the amount of **\$263,893.73**.

12. This Complaint claims all present delinquencies owed to the Funds by Defendant referenced in Paragraph 11 above and all future delinquencies that become due and owing during the pendency of this collection lawsuit.

**COUNT II: LABOR MANAGEMENT RELATIONS ACT**

13. Plaintiffs hereby incorporate by reference the above Paragraphs 1-12.

14. By the above action, Defendant has violated the parties' CBA, to which the Plaintiffs are third-party beneficiaries with standing to bring a breach of contract claim pursuant to LMRA § 310(a), 29 U.S.C. § 185(a); and Plaintiffs are entitled to relief ordering the Defendant to remit contributions due and owing under the terms of the parties' CBA.

**COUNT III: ERISA FIDUCIARY LIABILITY**

15. Plaintiffs hereby incorporate by reference Paragraphs 1-14.

16. The delinquent contributions referred to in Counts One and Two above are Trust Fund assets over which Defendant Sterling Plumbing's President, Manuel A. Pacheco, ("Mr. Pacheco"), maintained authority or control.

17. Upon information and belief, Defendant Mr. Pacheco used these Trust Fund assets referenced in Paragraph 16 for purposes other than paying the delinquent contributions.

18. In failing to hold plan assets in trust and in directing these Trust Fund assets for Sterling Plumbing's other business purposes, Mr. Pacheco acted as a fiduciary of the Trust Fund in regard to those assets within the meaning of 29 U.S.C. §1002(21)(A)(i) and did so contrary to the fiduciary obligations under ERISA pursuant to 29 U.S.C. §1104(a)(1) and 1109(A), and contrary to the prohibition against self-dealing under ERISA, 29 U.S.C. §1106(b)(1).

19. ERISA §409(a) [29 U.S.C. §1109(a)] imposes personal liability to make good to a Plan for any losses resulting from a fiduciary breach. Thus, as a fiduciary subject to the duties imposed by ERISA §404 [29 U.S.C. §1104], Mr. Pacheco is individually liable for the repayment to the Trust Funds of the delinquent contributions referred to in Counts One and Two above.

WHEREFORE, Plaintiffs demand that judgment enter in accordance with Sections 502(a)(3) and 515 of ERISA, 29 U.S.C. § 1132(g)(2) and § 1145, and Section 301 of the LMRA, 29 USC § 185:

- A. In the amount of **\$263,893.73** for unpaid benefit contributions, interest in the amount of twelve percent (12%) per annum, pursuant to the Trust Agreements, on the amount due from the date of the delinquency until the date of payment, costs and reasonable attorney's fees, pursuant to 29 U.S.C. Section 1132(g)(2) and 28 U.S.C. Section 1961.

- B. Ordering Defendant Sterling Plumbing & Heating Co., Inc. to make payment to the respective Plaintiffs of the unpaid contributions, an amount equal to the greater of (1) interest on the unpaid contributions, or (2) liquidated damages provided for in the Plan, reasonable attorney's fees, and costs of this action, pursuant to 29 U.S.C. Section 1132(g).
- C. Ordering Defendant Manuel A. Pacheco to make payment to the respective Plaintiffs of the unpaid contributions, an amount equal to the greater of (1) interest on the unpaid contributions, or (2) liquidated damages provided for in the Plan, reasonable attorney's fees, and costs of this action, pursuant to 29 U.S.C. Section 1132(g).
- D. For such further relief as the Court may deem appropriate.

**DATED** at East Hartford, Connecticut, this 6<sup>th</sup> day of April 2005.

THE PLAINTIFFS,

By: 

Robert M. Cheverie, Esq.  
ROBERT M. CHEVERIE &  
ASSOCIATES, P.C.  
Commerce Center One  
333 East River Drive, Suite 101  
East Hartford, CT 06108-4203  
Tele.: (860) 290-9610  
BBO #651103  
THEIR ATTORNEY

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing ERISA Collection Complaint has been served by certified mail, as required by Section 502(h) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1132(h), this 6<sup>th</sup> day of April 2005, on the following:

Secretary of the Treasury  
INTERNAL REVENUE SERVICE  
P. O. Box 13163  
Baltimore, MD 21203  
Attn: **Employee Plans**

Secretary of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210  
Attn: **Assistant Solicitor for Plan Benefits Security**

  
Robert M. Cheverie, Esq.

TMB.PLUMBERS 4.STERLING PLUMBING.2005  
Complaint 4-4-05

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I (a) PLAINTIFFS

Trustees of the Plumbers & Pipefitters' National Pension Fund;  
Trustees of the Plumbers & Pipefitters' International Training  
Fund; Trustees of the Plumbers and Pipefitters' Local Union  
No. 4 Health & Welfare Fund; Pension Fund; Annuity Fund;  
Joint Apprentice Training Fund; Industry Fund; Building &  
Relief Fund and Plumbers and Pipefitters Union Local No. 4

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Worcester  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert M. Cheverie, Esq.  
**ROBERT M. CHEVERIE & ASSOCIATES, P.C.**  
333 East River Drive, Suite 101  
East Hartford, CT 06108 (860) 290-9610

## DEFENDANTS

Sterling Plumbing & Heating Co., Inc. and  
Manuel A. Pacheco

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Worcester

(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only) (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Breach of Collective Bargaining Agreement and to collect contributions due to Plaintiffs' Funds under ERISA,  
29 U.S.C. Sections 185 and 29 U.S.C., Section 1002 et. seq.

## V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 hia (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other (including 1983 Actions)		

## VI. ORIGIN

- (PLACE AN "X" IN ONE BOX ONLY)
- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$300,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY:

(See Instructions):

JUDGE

DOCKET NUMBER

DATE  
April 6, 2005

SIGNATURE OF ATTORNEY OF RECORD

Robert M. Cheverie



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Trustees of the Plumbers & Pipefitters' National Pension Fund v. Sterling Plumbing & Heating Co., Inc.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☐
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☒ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Robert M. Cheverie, ROBERT M. CHEVERIE & ASSOCIATES, P.C.ADDRESS 333 East River Drive, Suite 101, East Hartford, CT 06108TELEPHONE NO. (860) 290-9610